



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 27, 1997

Ms. Regina Grimes
Assistant General Counsel
Texas Department of Criminal Justice
Legal Affairs Division
P.O. Box 13401
Capitol Station
Austin, Texas 78711

OR97-0166

Dear Ms. Grimes:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 103245.

The Texas Department of Criminal Justice ("TDCJ") received a request for all records pertaining to a certain individual. You state that some of the requested records have been released. You claim, however, that certain documents are excepted from required public disclosure by sections 552.101, 552.107, and 552.111 of the Government Code. We have reviewed the submitted documents.¹

The Open Records Act imposes a duty on governmental bodies seeking an open records decision pursuant to section 552.301 to submit that request to the attorney general within ten days after the governmental body's receipt of the request for information. The time limitation found in section 552.301 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). When a request for an open

¹The requestor indicates that some of the requested information is improperly being withheld. The Open Records Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 (1986) at 3. However, a governmental body must make a good faith effort to relate a request to information which it holds. Open Records Decision No. 561 (1990).

We also note that the federal Freedom of Information Act does not apply to Texas state agencies; rather, the Texas Open Records Act does. Compare 5 U.S.C. §552, et seq. and Gov't Code § 552.002-.003.

records decision is not made within the time period prescribed by section 552.301, the requested information is presumed to be public. *See* Gov't Code § 552.302. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. *See, e.g.,* Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

The department received the request for information on several occasions, but at the latest on September 30, 1996. You did not seek a decision from this office until October 28, 1996. Consequently, you have not met your statutory burden. Gov't Code 552.301. Thus, we will examine whether the documents are public and must be disclosed.²

You claim that much of the submitted information may be withheld because it is made confidential by law. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes and generally presents a compelling reason to overcome the presumption of openness. You claim that under a previous decision from this office the materials may be withheld under section 18(a) of article 42.18 of the Code of Criminal Procedure. Open Records Letter No. 0728 (1996). That statute reads as follows:

(a) Except as provided by Subsection (b), all information, including victim protest letters or other correspondence, victim impact statements, lists of inmates eligible for release on parole, and arrest records of inmates, obtained and maintained in connection with inmates of the institutional division subject to parole, release to mandatory supervision, or executive clemency, or individuals who may be on mandatory supervision or parole and under the supervision of the pardons and paroles division, or persons directly identified in any proposed plan of release for a prisoner, is confidential and privileged.

In our previous decision, we stated that section 18(a) did not apply to the records of persons who are neither inmates nor individuals on mandatory supervision or parole and under the supervision of TDCJ's pardons and paroles division. Open Records Letter No. 0728 (1996) at 2-3. As the requested documents do not appear to involve an inmate, parolee, or individual on mandatory supervision, we conclude that the requested information is not made confidential by section 18 of article 42.18 of the Code of Criminal Procedure.

You have shown, however, that the requested records may contain information made confidential by another statute. Federal regulations prohibit the release of criminal history report information ("CHRI") maintained in state and local CHRI systems to the

²Generally, neither section 552.107 nor section 552.111 provide compelling demonstrations to overcome the presumption of openness. Open Records Decision Nos. 630 (1994), 473 (1987).

general public. *See* 28 C.F.R. § 20.21(c)(1) ("Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given."), (2) ("No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself."). Section 411.083 provides that any CHRI maintained by the Department of Public Safety ("DPS") is confidential. Gov't Code § 411.083(a). Similarly, CHRI obtained from the DPS pursuant to statute is also confidential and may only be disclosed in very limited instances. *Id.* § 411.084; *see also id.* § 411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). Therefore, if you have CHRI in your possession and it falls within the ambit of these state and federal regulations, you must withhold the CHRI from the requestor.

In the absence of a demonstration that the remaining information is confidential by law or that other compelling reasons exist as to why the remaining information should not be made public, you must release the information. Open Records Decision No. 195 (1978). *See also* Gov't Code § 552.352 (the distribution of confidential information is a criminal offense); Gov't Code § 552.023(a) (person has a right of access to information that relates to that person and is protected from disclosure by laws intended to protect that person's privacy interests).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Ref: ID# 103245

Enclosures: Submitted documents

cc: Mr. Robert Thorn
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(w/o enclosures)